

## Department of Energy

## § 719.40

(3) Whether the Government must receive an assignment of the contractor's rights.

(b) The contractor shall proceed with such litigation in good faith and as directed from time to time by the Department Counsel.

(c) If the costs and expenses associated with the legal proceeding against the contractor are potentially allowable under the contract, the contractor shall:

(1) Authorize Department representatives to collaborate with contractor in-house counsel or Department Counsel-approved outside counsel in settling or defending the legal proceeding; or counsel for any associated insurance carrier in settling or defending the claim if retrospective insurance applies or the amount of liability claimed exceeds the amount of insurance coverage; and

(2) Authorize Department representatives to settle the legal proceeding or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, except where the liability is covered by bond or is insured by an insurance policy other than retrospective insurance.

### **§ 719.33 In what circumstances must the contractor seek permission from the Department to enter a settlement agreement?**

The contractor must obtain permission from Department Counsel to enter a settlement agreement if the settlement agreement requires contractor payment of \$25,000 or more. Obtaining this approval does not represent a determination that the settlement amount and/or the legal costs incurred in connection with the underlying legal matter will be determined to be allowable.

### **§ 719.34 What documentation must the contractor provide to Department Counsel when it seeks permission to enter a settlement agreement?**

The contractor must provide a written statement to the Department Counsel that includes the following information, as applicable:

(a) The amount of any proposed monetary settlement payment.

(b) Titles and docket numbers associated with the case(s) for which the contractor is seeking approval to settle;

(c) The procedural history of the case(s) or issue(s);

(d) A narrative description of the legal claims or allegations at issue in the matter and any background information that explains events that precipitated the initiation of the matter;

(e) A description of the history of the settlement discussions;

(f) A description of the terms of the proposed settlement agreement or requested settlement authority and the rationale for the contractor entering into the proposed agreement;

(g) If the proposed total monetary settlement amount would be allocated among multiple plaintiffs, a list of the plaintiffs and the amount of money each would receive pursuant to the proposed settlement agreement as well as an explanation as to why the settlement amount is different for any particular plaintiff, if appropriate;

(h) A description as to why settlement of the matter is in the best interest of the Department; and

(i) Any additional supporting documents requested by Department Counsel.

### **§ 719.35 When must the contractor provide a copy of an executed settlement agreement?**

A contractor must provide a copy of an executed settlement agreement within seven (7) days of execution.

## **Subpart E—Reimbursement of Costs Subject to This Part**

### **§ 719.40 What effect do the regulations of this part have on cost allowability?**

Contractor and retained legal counsel compliance with this part is a prerequisite for allowability of legal costs. However, compliance with this part does not guarantee that legal costs will be determined to be allowable. Only the contracting officer has the authority to determine allowability of costs in accordance with 48 CFR (FAR) part 31 and (DEAR) part 931 and all other applicable contract terms and conditions.